

APPEAL NO. 031635
FILED AUGUST 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 20, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with an injury date of _____, and that the respondent (self-insured) has not waived the right to contest compensability of the claimed injury, because the self-insured timely contested the claimed injury in accordance with Section 409.021. The claimant appeals these determinations. The appeal file contains no response from the self-insured.

DECISION

Affirmed.

Whether the claimant sustained a compensable repetitive trauma injury was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the waiver issue, the hearing officer found that the employer received first written notice of the injury on September 4, 2001, but that the State Office of Risk Management (SORM) first received written notice of the claimed injury on September 6, 2001, and that it filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Texas Workers' Compensation Commission (Commission) on September 13, 2001, disputing compensability of the alleged injury. Since the dispute was filed with the Commission within seven days of the receipt of written notice by SORM, the hearing officer concluded that the carrier did not waive its right to dispute compensability because it had timely contested the injury in accordance with Section 409.021. In reaching his decision, the hearing officer reasoned that notice to the employer was not the same as notice to SORM pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 109.1 (Rule 109.1). Rule 109.1(a) provides that in administering the applicable provisions of the 1989 Act, a state agency shall act in the capacity of the employer. Rule 109.1(b) provides that SORM shall act in the capacity of the insurance carrier. We conclude that the hearing officer's determination on the waiver issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge